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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/782,539	02/13/2001	Daniele Brotto	TN-1379A	3388

7590 01/02/2003

Adan Ayala, Esq.
The Black & Decker Corporation
701 East Joppa Road
Towson, MD 21286

EXAMINER

TIBBITS, PIA FLORENCE

ART UNIT

PAPER NUMBER

2838

DATE MAILED: 01/02/2003

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Paper No. 15

Application Number: 09/782,539

Filing Date: February 13, 2001

Appellant(s): BROTTO ET AL.

MAILED

DEC 31 2002

GROUP 2000

EXAMINER'S ANSWER

This is in response to the appeal brief filed November 12, 2002.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows: claims 25-28 and 30-32 are currently pending in the present

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application. Claims 25-28 and 30-32 are rejected and presently appealed. Applicant incorrectly includes claim 29 with the appealed claims.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is substantially correct. The changes are as follows: claims 25-28 and 30-32 are unpatentable under 35 USC 103(a) over US Patent No. 5903462 ("Wagner").

The rejection of claims 25-28 and 30-32 unpatentable under 35 USC 103(a) over US Patent No. 4636961 ("Bauer") is withdrawn.

(7) Grouping of Claims

Appellant's brief includes a statement that claims 25, 27-28, 31-32 stand or fall together; and 26, 30 stand or fall together.

(8) ClaimsAppealed

The copy of the appealed claims contained in the appendix to the brief is correct.

(9) Prior Art of Record

✓5903462

Wagner et al.

5-1999

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 25-28 and 30-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wagner et al. [hereinafter Wagner]. The patent discloses **a power tool** (fig.1, and column 6, lines 20-28) comprising a **non-volatile EEPROM memory** 304 (column 8, line 19), storing **use profile information** about the tool (column 5, lines 8-23, and column 8, line 19-20). The use profile information includes **length of**

use, column 5, lines 19-20 describes "**total turns counts since the tool was assembled and the total number of times a non-zero voltage has been applied to the motor**". The **stored information is downloadable via the Remote Computer Port**, no separate reference numeral, fig.3, **to a computer**, column 6, line 46, and column 8, lines 32-33. The computer inherently functions as a **reader apparatus**, since it accesses and acquires data stored in the memory. The disclosure of Wagner differs from the claimed invention in not using the terminology "use profile information". MPEP 2111.01 states that "**during patent examination, the pending claims must be given the broadest reasonable interpretation consistent with the specification**". It would have been obvious to a person having ordinary skill in the art at the time the invention was made that the **performance history/log** in Wagner's apparatus provides use profile information since it analyzes data from a performance history recorded by the tool.

The patent discloses "**the operating parameters monitored comprise temperatures**" (column 3, lines 33-34, and fig.3) and also "**temperature transducers are also located within the (tool) housing to monitor among others the motor temperature and the temperature of the power supply which may be a battery. The output of the torque and temperature transducers will be represented as digital values to the processor**" (column 2, lines 36-41). It would have been obvious to a person having ordinary skill in the art at the time the invention was made that the power supply temperature in Wagner's apparatus provides information about the power tool temperature since it analyzes data from a transducer located within the tool housing.

The patent discloses that "the processor contains a **clock** which provides timing pulses as the interrupts to which the processor responds on periodic and asynchronous bases" and that "**these performance records will...contain...time information on fasteners as they were tightened or loosened**" (column 2, lines 48-50 and 59-60). It would have been obvious to a person having ordinary skill in the art at the time the invention was made that the time information on fasteners' operability in Wagner's apparatus provides information about the power tool **length of use** since the tool's function is to power up a fastener interface mechanism.

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(11) Response to Argument

Appellant argues that Wagner does not disclose the limitations of claim 25, which requires the "**stored information [be] downloadable into a reader apparatus**". Appellant is attempting to make a distinction between a computer and a reader apparatus. This argument is not persuasive. The appellant's own disclosure describes the reader in fig.4 as comprising a **microprocessor** and a **memory**. It is the examiner's position that the computer disclosed by Wagner meets this description. Appellant argues that Wagner does not disclose the limitations of claim 26 reciting that "the stored information comprising **at least one** of the group consisting of tool temperature, length of use, and number of times tool has been turned on". Wagner discloses, and appellant agrees, storing information "when the tool powered up, or when a temperature fault occurred", which meets **at least one** of the required stored information. However, to answer the appellant's argument that the use profile information should include **length of use**, Wagner describes "total turns counts since the tool was assembled and the total number of times a **non-zero voltage** has been applied to the motor", as well as "these performance records will...contain...time information on fasteners as they were tightened or loosened". Since the tool's function is to power up a fastener interface mechanism, the time information on fasteners' operability in Wagner's apparatus provides information about the power tool **length of use**. It is the examiner's position that by storing information regarding the total number of times a non-zero voltage has been applied to the motor, and time information on fasteners as they were tightened or loosened, Wagner provides the description for tool length-of-use information.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Pia F Tibbits
Examiner
Art Unit 2838

PT
December 20, 2002

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Conferees

Mike Sherry *MS*

Olik Chaudhuri *oc*

Adan Ayala, Esq.
The Black & Decker Corporation
701 East Joppa Road
Towson, MD 21286



12/20/02

MICHAEL SHERRY
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800